



an ciste náisiúnta um cheannach cóireála
the national treatment purchase fund

PROTECTED DISCLOSURE POLICY

CONTROL

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Policy Name: Protected Disclosure Policy

Amendments and Revisions

Review date	Document owner	Version number	Amendments & Revisions	Author	Authorised by	Next review
23 April 2018	NTPF Board	1	New policy	Audit, Quality Assurance and Research Director (Secretary to the Board)	NTPF Board	
July 2019	NTPF Board	1	New formatting	Corporate Services Director	Corporate Services Director	Q3 2021
27 June 2022	NTPF Board	2	Updated definition of a protected disclosure and employee redress.	Corporate Services Support Officer		Q1 2024

Purpose of this policy

The NTPF is committed to maintaining an open culture with the highest standards of honesty and accountability where our staff can report any concerns in confidence.

This policy applies to all of our employees at all levels, agency or contract and is intended to encourage and enable workers to raise concerns in relation to wrongdoing, illegal practices or unethical conduct that has come to his/her attention through work. This policy is intended to facilitate an employee to raise concerns or disclose information without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

It is important to note that should you have a concern in relation to your own employment or personal circumstances in the workplace it should be dealt with by way of our Grievance Procedure. Likewise concerns arising in regard to workplace relationships should generally be dealt with through our Dignity in the Workplace policy.

It is also important to note that this policy does not replace any legal reporting or disclosure requirements. Where statutory reporting requirements and procedures exist these must be complied with fully.

Definition of the Protected Disclosures Act

The Protected Disclosures Act 2014 aims to protect people who raise concerns about possible wrongdoing in the workplace. The Act, which came into effect on 15 July 2014, is often called the whistle blower legislation. It provides for redress for employees who are dismissed or otherwise penalised for having reported possible wrongdoing in the workplace.

The Act's definition of the term worker includes:

- Employees or former employees
- Trainees
- People working under a contract for services
- Independent contractors
- Agency worker
- People on work experience and the Gardaí

The legislation does not specifically cover volunteers, although many public bodies will continue to investigate reports of wrongdoing from volunteers as if they were protected disclosures. The volunteers, however, do not benefit from the Act's protections.

Before the 2014 Act came into effect, some sectors, such as health, were already covered by protected disclosures legislation – see 'Further information' below.

What is a Protected Disclosure?

A protected disclosure in the 2014 Act is a disclosure of information, which in the reasonable belief of the worker, tends to show one or more relevant wrongdoing which came to the attention of the worker in connection with the worker's employment and is disclosed in the

manner described in the Act.

Under the Act, you make a protected disclosure if you are a worker and you disclose *relevant information* in a particular way. Information is relevant if it came to your attention in connection with your work and you reasonably believe that it tends to show *wrongdoing*.

Wrongdoing is widely defined in the Act and includes:

- Commission of criminal offences
- Failure to comply with legal obligations
- Endangering the health and safety of individuals
- Damaging the environment
- Miscarriage of justice, misuse of public funds
- Oppressive, discriminatory, grossly negligent or grossly mismanaged acts or omissions by a public body
- Concealment or destruction of information about any of the above wrongdoing

Wrongdoing can take place in or outside the State.

If it is the worker's or the employer's role to detect, investigate or prosecute any wrongdoing or if the wrongdoing reported relates to a person other than the employer, then it is not a wrongdoing for the purpose of the Act. For example, a member of An Garda Síochána who reports wrongdoing by a person outside of An Garda Síochána will not be covered by this Act, as the wrongdoing will not have been committed by his employer.

Even if the information is proved to be incorrect, you are still protected by the Act provided you had a reasonable belief in the information.

A grievance is a concern an employee has about their terms and conditions of employment, working procedures or working conditions. For example, if you have a complaint around selection criteria for a promotional position or if you have a complaint around the allocation of overtime. Generally, grievance dealt with through an internal grievance procedure. However, some grievances may also be protected disclosures and therefore are more appropriately dealt with in accordance with the Act.

Retaining anonymity

In general, people who receive protected disclosures or who subsequently deal with them cannot disclose any information which may identify the person who made the disclosure. There are some exceptions to this, for example, if identifying the whistle-blower is essential to the effective investigation of the matter or is required in order to prevent crime or risks to State security, public health or the environment.

Aims of the Policy

The aims of the policy are:

- To encourage you to feel confident and safe in raising concerns and disclosing information;

- To provide avenues for you to raise concerns in confidence and receive feedback on any action taken;
- To ensure that you receive a response where possible to your concerns and information disclosed; and
- To reassure you that you will be protected from penalisation or any threat of penalisation.

Concerns

What types of concerns can be raised? A concern or disclosure should relate to a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which has come to your attention in connection with your employment and about which you have a reasonable belief of wrongdoing.

What types of concerns should not be raised under this procedure? A personal concern, for example a grievance around your own contract of employment would not be regarded as a protected disclosure or a whistleblowing concern and would be more appropriately processed through our Grievance Procedure.

Safeguards and Penalisation

A worker who makes a disclosure and has a reasonable belief of wrongdoing will not be penalised by this organisation, even if the concerns or disclosure turn out to be unfounded.

Penalisation includes suspension/dismissal, disciplinary action, demotion, discrimination, threats or other unfavourable treatment arising from raising a concern or making a disclosure on the basis of reasonable belief for doing so. If you believe that you are being subjected to penalisation, as a result of making a disclosure under this procedure, you should inform your manager/senior manager immediately.

Workers who penalise or retaliate against those who have raised concerns under this policy will be subject to disciplinary action.

Workers are not expected to prove the truth of an allegation. However they must have reasonable belief that there are grounds for their concern. It should be noted that appropriate disciplinary action may be taken against any worker who is found to have raised a concern or raised a disclosure with malicious intent.

Confidentiality

This organisation is committed to protecting the identity of the worker raising a concern and ensures that relevant disclosures are treated in confidence. The focus will be on the wrongdoing rather than the person making the disclosure. However there are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where the worker is participating in an investigation into the matter being disclosed. Should such a situation arise, we will make every effort to inform the worker that his/her identity may be disclosed.

Procedure for raising a concern

A concern may be raised anonymously. However on a practical level it may be difficult to investigate such a concern. We would encourage workers to put their names to allegations, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for us to assess the disclosure and take appropriate action including an investigation if necessary.

The appropriate route to raise concerns is initially with your line manager. However, should you not wish to use this route, you should approach a member of the Executive, the Chief Executive Officer or the Chairperson of the Board of the NTPF.

The earlier you express the concern the easier it will be for us to deal with the matter quickly. Concerns may be raised verbally or in writing. Should a concern be raised verbally the appropriate member of the executive or the Chairperson of the Board will arrange a meeting to discuss the matter with the employee on a strictly confidential basis. At this point it will be clarified with the employee if the concern is appropriate to this procedure or is a matter more appropriate for other work place procedures such as Grievance or Dignity in the workplace.

When it is established that it is an appropriate disclosure a written record will be kept of the meeting with copy provided to the concerned employee after the meeting. This written record should include background and history of the concern, relevant details, insofar as possible, such as dates, sequence of events and description of circumstances.

Employees may choose to be accompanied by a colleague or trade union representative. In regard to confidentiality, it is important that there should be an awareness of respecting sensitive company information, which, while unrelated to the disclosure, may be disclosed in the course of a consultation or investigation process.

Procedure for dealing with an appropriate concern

An initial assessment will be carried out by the Executive or the Chairperson of the Board to examine what actions need to be taken to deal with the matter. This may involve simply clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation.

If on foot of the initial assessment, it is concluded that there are grounds for concern that cannot be dealt with at this point, we will conduct an investigation which will be carried out fairly and objectively. The form and scope of the investigation will depend on the subject matter of the disclosure.

Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate authorities. Likewise if urgent action is required (for example to remove a health and safety hazard), this action will be taken.

It is important that you feel assured that a disclosure made by you under this policy is taken seriously and that you are kept informed of steps being taken by us in response to your

disclosure. In this regard the Executive or Chairperson will undertake to communicate with you as follows:

- We will acknowledge receipt of your disclosure and arrange to meet with you as outlined above;
- We will inform you of how it is proposed to investigate the matter and keep you informed of actions if any, where possible including the outcome of the investigation.

It is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving you specific details of an investigation.

Employee redress

The Act provides for redress for employees who are penalised because they made a protected disclosure. You are penalised if there is any act or omission that is detrimental to you, for example, dismissal, unfair treatment or threats of reprisal.

Specific remedies for workers who are penalised for making a protected disclosure are provided for in Part 3 of the Act.

The NTPF is committed to ensuring that penalisation of workers who make a disclosure will not be tolerated and workers who feel that they are being subjected to adverse treatment should report the matter immediately to management. The NTPF will investigate such notifications and take appropriate action (which may include disciplinary action against supervisors and co-workers) where necessary.

A disclosure is assumed to be protected until it is proved that it is not protected. Under the Protected Disclosures Act, the employer has to prove that the disclosure is not protected within the meaning of the Act.

Dismissal after making a protected disclosure

If you are dismissed from your employment because you made a protected disclosure, that dismissal is regarded as unfair. You may make a claim for unfair dismissal and if your claim succeeds, you may be awarded compensation of up to 5 years' pay. (Generally, the maximum compensation in unfair dismissal cases is 2 years' pay).

Unfair dismissal protection does not generally apply to employees with less than 1 year service, trainees or Gardaí. These restrictions do not apply where the dismissal is because of making a protected disclosure. (The restriction on members of the Defence Forces continues to apply).

Your motivation for making a protected disclosure may affect the level of compensation you are awarded. If the investigation of the wrongdoing was not your only or main motivation for making the disclosure, then the compensation awarded to you may be up to 25% less than it would otherwise be.

Penalties other than dismissal

If you make a protected disclosure, your employer is prohibited from penalising or threatening to penalise you or causing or permitting anyone else to do so. If you are penalised or threatened, you may make a complaint to the Workplace Relations Commission using the online complaint form available on workplacelrelations.ie. You should make a complaint within 6 months (although this time can be extended to 12 months if there is a valid reason for the delay).

The adjudicator's decision on your complaint may require your employer to take a specific course of action and may award you compensation.